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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/721,727	11/25/2003	Gary P. Raden	MS306094.01	5767

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EXAMINER

JEAN GILLES, JUDE

ART UNIT	PAPER NUMBER
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2143

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/22/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/721,727	RADEN ET AL.	
	Examiner	Art Unit	
	Jude J. Jean-Gilles	2143	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>05/13/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This office action is responsive to communication filed on 11/25/2003.

Information Disclosure Statement

1. The references listed on the Information Disclosure Statement submitted on 05/13/2004 have been considered by the examiner (see attached PTO-1449A).

Double Patenting

2. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefore..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 1-41 of this Application, are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-41 of Original Application No.

10/721726. The Specifications and the drawings of this Continuation in Part Application are also identical to those of the Original application No. 10/721726. This is a

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provisional double patenting rejection since the conflicting claims have not in fact been patented and applicant has not taken any action at this point to overcome the provisional rejection.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. **Claims 1-41** are rejected under 35 U.S.C. 102(b) as being anticipated by Lau U.S Patent No. 6,101,500.

Regarding **claim 1-41**, Fraser discloses:

1. A system that facilitates networked system monitoring, comprising:

a component that obtains aggregated system state data for at least one system component(fig. 2C; item 253; column 6, lines 58-67; column 7, lines 1-9; column 11, lines 15-47);

an analysis component that processes at least a portion of the aggregated system state data to determine at least one characteristic of at least one system state (column 11, lines 15-47); and

a user interface that provides state related information based upon the state characteristic to a user (fig. 4, item 40; column 13, lines 1-23).

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2. The system of claim 1, the state related information comprising a current state status relating to at least one selected from the group consisting of system usage states, system performance states, and system health states (column 18, lines 40-50; column 11, lines 55-67).

3. The system of claim 2, the current state status relating to an individual end-user of the networked system (column 6, lines 58-67; column 7, lines 1-9).

4. The system of claim 2, the current state status indicating top "X" asset utilization of a particular networked system asset, where X represents a desired number of top asset users (column 3, lines 10-29).

5. The system of claim 4, the desired number of top asset users comprising at least one selected from the group consisting of approximately 1, approximately 5, approximately 10, approximately 25, approximately 50, approximately 75, and approximately 100 (column 3, lines 10-29).

6. The system of claim 4, the particular networked system asset comprising at least one selected from the group consisting of memory usage, CPU utilization, hard disk space usage, random access memory (RAM) usage, and network communication bandwidth usage (column 18, lines 40-49; column 11, lines 16-47).

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7. The system of claim 4, the top asset users comprising running processes (fig. 6 A-B; 7 A-B; column 10, lines 8-17).

8. The system of claim 4, the top asset users comprising end-users of the networked system (column 6, lines 58-67; column 7, lines 1-9).

9. The system of claim 8, the particular networked system asset comprising Internet usage (fig. 1; column 8, lines 27-45; column 10, lines 17-29).

10. The system of claim 1, the state related information comprising, at least in part, administrative guidance information corresponding to the networked system (column 11, lines 16-46).

11. The system of claim 1, the state related information comprising an historical state status relating to at least one selected from the group consisting of system usage states, system performance states, and system health states (column 18, lines 40-50; column 11, lines 55-67).

12. The system of claim 11, the historical state status relating to an individual end-user of the networked system.

13. The system of claim 1, the system component comprising a server.

14. The system of claim 1, the user interface comprising at least one selected from the group consisting of a system usage user interface, a system performance user interface, and a system health user interface (column 18, lines 40-50; column 11, lines 55-67).

15. The system of claim 1, the user interface comprising a customizable user interface (fig. 1, fig. 4 and item 401).

16. The system of claim 1, the user interface comprising an interactive user interface (fig. 1, fig. 4 and item 401).

17. The system of claim 16, the interactive user interface comprising a prior state reversion control user interface (fig. 1, fig. 4 and item 401).

18. The system of claim 16, the interactive user interface comprising a control user interface that controls a utilization aspect of the networked system (fig. 1, fig. 4 and item 401).

19. The system of claim 18, the control user interface comprising a system prioritization user interface that prioritizes usage of the utilization aspect of the networked system (fig. 1, fig. 4 and item 401).

20. The system of claim 18, the utilization aspect of the networked system comprising at least one selected from the group consisting of Internet bandwidth usage, CPU usage, hard disk space usage, e-mail usage, fax usage, and printing usage (column 3, lines 10-29).

21. A method for facilitating monitoring of a networked system, comprising: acquiring aggregated system state data for at least one system component; analyzing at least a portion of the aggregated system state data to determine at least one characteristic of at least one system state; and providing state related information based upon the state characteristic to a user (fig. 2C; item 253; column 6, lines 58-67; column 7, lines 1-9; column 11, lines 15-47; fig. 1 and fig. 4).

22. The method of claim 21, further comprising: employing the state related information to optimally manage productivity of end-users of the networked system (fig. 4, item 40; column 13, lines 1-23).

23. The method of claim 21, further comprising: utilizing the state related information to provide control of a related characteristic of the networked system (column 6, lines 58-67; column 7, lines 1-9; column 11, lines 15-47).

24. The method of claim 23, the related characteristic of the networked system

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comprising at least one selected from the group consisting of state reporting management, process thread management, Internet use management, data storage management, memory use management, processing power use management, and load management (figs. 1, 2, and 4; column 8, lines 27-64).

25. The method of claim 23, the control comprising at least one selected from the group consisting of automatic control and manual control (figs. 1, 2, and 4).

26. The method of claim 21, the user comprising a computing device (column 6, lines 58-67; column 7, lines 1-9; column 11, lines 15-47).

27. The method of claim 21, further comprising: utilizing state related error data and the aggregated system state data to provide system update information to the user (column 6, lines 58-67; column 7, lines 1-9; column 11, lines 15-47).

28. The method of claim 27, further comprising: providing control to the user to initiate system updates provided in the system update information (fig. 5B).

29. The method of claim 28, providing control including, at least in part, selecting, via user input, to automatically update at least one parameter of the networked system (figs. 1, and 4).

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30. The method of claim 21, further comprising: utilizing state related error data and the aggregated system state data to reduce state monitoring information (column 20, lines 5-14).

31. The method of claim 30, the state related error data comprising at least one selected from the group consisting of software defects and hardware defects (see abstract).

32. The method of claim 21, further comprising: receiving control parameters from a user to control state related parameters (column 6, lines 58-67; column 7, lines 1-9; column 11, lines 15-47).

33. The method of claim 21, further comprising: data mining the aggregated system state data to determine at least one selected from the group consisting of a diagnosis of at least one aspect of the networked system and a prognosis of at least one aspect of the networked system (column 6, lines 58-67; column 7, lines 1-9; column 11, lines 15-47).

34. The method of claim 21, further comprising: controlling, via a user interface, the networked system based, at least in part, upon the aggregated system state data (column 6, lines 58-67; column 7, lines 1-9; column 11, lines 15-47).

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35. The method of claim 21, further comprising: providing system state related recommendations based, at least in part, upon the aggregated system state data (column 6, lines 58-67; column 7, lines 1-9; column 11, lines 15-47).

36. A system that facilitates networked system monitoring, comprising: means for obtaining aggregated system state data for at least one system component; means for processing at least a portion of the aggregated system state data to determine at least one characteristic of at least one system state; and means for providing state related information based upon the state characteristic to a user (column 6, lines 58-67; column 7, lines 1-9; column 11, lines 15-47).

37. A data packet transmitted between two or more computer components that facilitates networked system monitoring, the data packet comprising, at least in part, information relating to monitoring of a networked system, the information including, at least in part, state related data based, at least in part, upon aggregated state data corresponding to at least one system component of the networked system (column 6, lines 58-67; column 7, lines 1-9; column 11, lines 15-47).

38. A system employing at least one system of claim 1 that provides a unified information source of at least one selected from the group consisting of performance monitoring data for a plurality of networked systems, usage monitoring data for a plurality of networked systems, and health monitoring data for a plurality of networked

systems (column 18, lines 40-50; column 11, lines 55-67).

39. A computer readable medium having stored thereon computer executable components of the system of claim 1 (fig. 1).

40. A device employing the method of claim 21 comprising at least one selected from the group consisting of a computer, a server, and a handheld electronic device (fig. 1).

41. A device employing the system of claim 1 comprising at least one selected from the group consisting of a computer, a server, and a handheld electronic device (fig. 1, items 102, 103 B, d, and F).

Conclusion

5. This **Action is made Non-Final**. Any inquiry concerning this communication or earlier communications from examiner should be directed to Jude Jean-Gilles whose telephone number is (571) 272-3914. The examiner can normally be reached on Monday-Thursday and every other Friday from 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley, can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is (571) 272-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-8400.

Jude Jean-Gilles
Patent Examiner

Art Unit 2143

JJ

March 16, 2007


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